

controlled by or under common control with the Advisers. Moreover, none of these directors is an officer, director, partner, co-partner, or employee of any Adviser, and the broker-dealers do not share any common directors, officers, or employees with the Advisers.

Applicants also state that the Distributor is retained directly by the Companies. Accordingly, the Companies' retention of the Distributor is not dependent on the identity of, or transactions involving, the Adviser. The Distributor's compensation for its services is based on asset levels and/or the receipt of sales loads, and it therefore has a direct economic interest in having the Sub-Advised Series prosper and grow. In this respect, the Distributor's interests are consistent with the interests of the shareholders of the Sub-Advised Series.

5. Applicants believe that the requested exemption is consistent with the protection of investors. WFNIA or its successor will continue to offer services at least comparable to those currently performed by WFNIA, and will be supported by the resources of one of the largest international financial services corporations. WFNIA or its successor will continue operations with WFNIA's current management, investment professionals, and resources remaining essentially intact. The services that WFNIA or its successor will perform under the Proposed Sub-Advisory Agreements will be identical in all material respects to the services currently performed by WFNIA, and the fee levels for such services will remain the same. Finally, applicants state that each series will continue to be subject to all other provisions of the Act designed to protect the interests of investors, including section 15(f)(1)(B), and all four interested directors will continue to be treated as interested persons of the Companies and the Advisers for all purposes other than section 15(f)(1)(A).

6. Applicants also believe that the requested exemption is consistent with the purposes fairly intended by the policies and provisions of the Act. Applicants submit that the legislative history of section 15(f) indicates that Congress intended the SEC to deal flexibly with situations where the imposition of the 75 percent requirement might pose an unnecessary obstacle or burden on a fund. Applicants argue that the SEC should exercise this flexibility in situations such as the proposed Transaction. Further, applicants state that section 15(f) was intended to ensure that, where there is a change in control of an investment adviser, the interests of investment company shareholders will

be protected and they will not be subject to any unfair burden as a result of such transaction. Applicants argue that the proposed Transaction is structured to protect the interests of the shareholders of each Sub-Advised Series and that shareholders will benefit from the requested exemption.

#### Applicants' Condition

Applicants agree that any order of the SEC granting the requested relief will be subject to the following condition:

If within three years of the completion of the Transaction, it becomes necessary to replace any director, that director will be replaced by a director who is not an interested person of Wells Fargo Bank, WFNIA, or its successor within the meaning of section 2(a)(19)(B) of the Act, unless at least 75% of the directors at that time are not interested persons of Wells Fargo Bank, WFNIA, or its successor.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

*Deputy Secretary.*

[FR Doc. 95-29916 Filed 12-4-95; 3:57 pm]

BILLING CODE 8010-01-M

[Release No. 34-36542; International Series No. 896; File No. S7-8-90]

#### Order Approving Proposed Amendment to the Options Price Reporting Authority's National Market System Plan for the Purpose of Updating the Current Fee Structure and Eliminating the Use of Separate News Service Agreements

November 30, 1995.

On April 25, 1995, the Options Price Reporting Authority ("OPRA")<sup>1</sup> filed with the Securities and Exchange Commission ("SEC" or "Commission") pursuant to Rule 11Aa3-2<sup>2</sup> under the Securities Exchange Act of 1934 ("Exchange Act")<sup>3</sup> a proposed amendment to its National Market System Plan ("OPRA Plan") for the purpose of updating the current fee structure and eliminating the use of separate news service agreements. Notice of the proposed amendment was

<sup>1</sup> OPRA is a National Market System Plan approved by the Commission pursuant to Section 11A of the Exchange Act and Rule 11Aa3-2 thereunder. Securities Exchange Act Release No. 17638 (Mar. 18, 1981).

The Plan provides for the collection dissemination of last sale and quotation information options that are traded on the five member exchanges. The five exchanges which agreed to the OPRA Plan are the American Stock Exchange ("AMEX"); the Chicago Board Options Exchange ("CBOE"); the New York Stock Exchange ("NYSE"); the Pacific Stock Exchange ("PSE"); and the Philadelphia Stock Exchange ("PHLX").

<sup>2</sup> 17 CFR 240.11Aa3-2.

<sup>3</sup> 15 S.C. 78K-1.

provided by issuance of a Commission release<sup>4</sup> and by publication in the Federal Register.<sup>5</sup> The Commission received 220 comment letters. For the reasons discussed below, the Commission is approving the proposed amendment.

#### I. Description

OPRA proposes to establish a new redistribution fee of \$1800 per month that will be payable by every vendor that redistributes options market information to any person, whether on a current or delayed basis. The redistribution fee, however, will not apply to a vendor whose redistribution of options information is limited solely to "historical" information.<sup>6</sup> With the introduction of the redistribution fee, the amendment eliminates the vendor and news service pass-through fee, previously \$2800.<sup>7</sup> Further, OPRA proposes to reduce the direct access charge from \$2800 to \$900 per month.<sup>8</sup>

In addition to restructuring its fees, OPRA proposes to eliminate the separate news service agreement. Instead, OPRA will categorize news services as vendor and will seek to have news services sign vendor agreements. OPRA also is proposing to make conforming changes to the OPRA Plan.

#### II. Summary of Comments

As noted above, the Commission received 220 comments letters regarding the proposal. Most comments were submitted by users of delayed data, primarily small investors who expressed concern about the impact the redistribution fee will have on their own fees. While some commenters did not object to existing and proposed OPRA fee for real-time data, virtually all commenters opposed the proposed redistribution fee as it applies to delayed data. The commenters claimed that the proposal will set a bad precedent that will lead other markets also to charge for delayed data.

Many commenters expressed a belief that all market information should be

<sup>4</sup> Securities Exchange Act Release No. 35804 (June 5, 1995).

<sup>5</sup> 60 FR 30905 (June 12, 1995).

<sup>6</sup> Under the proposal, information becomes "historical" upon the opening of trading in the next succeeding trading session of that same market. For example, reports of transactions completed in a trading session on Wednesday become historical reports from and after the opening of trading on the following Thursday.

<sup>7</sup> This \$2800 monthly fee currently is payable by every vendor and news service that receives options information from another vendor on a current basis.

<sup>8</sup> Currently, the direct access charge is payable by every vendor, subscriber or news service that has been authorized by OPRA to receive options information via the consolidated high-speed service from OPRA's Processor.

available to the public at no charge. Some equated market data to a form of advertising for which markets should not charge consumers. These commenters argue that the Commission should ensure the availability and accessibility of market information; that even a small increase in fees will force them to give up access to delayed data services; and that reduced access to market data will reduce trading activity by some investors. These commenters argued, therefore, that the proposal will reduce overall market liquidity.

Some commenters claimed that the proposal discriminates against the small investor because real-time data, while far more useful than delayed data, in their view is not affordable to the average investor. They argued that the effect of the redistribution fee on vendors of delayed data will be to price the small investor out of the information market altogether.

A few commenters challenged whether the exchanges have a proprietary interest in quote or transaction data. They claimed that OPRA should not be entitled to charge for information that OPRA does not own. One commenter claimed that while the manner in which the information is displayed may be protected under copyright laws, OPRA has no exclusive right to the information itself.<sup>9</sup>

OPRA responded to these comments in a letter dated August 1, 1995.<sup>10</sup> In its letter, OPRA stated that the Exchange Act contemplates the recovery of a portion of the costs of operating and maintaining exchange markets through fair, reasonable and nondiscriminatory fees for access to securities market information, and that the proposal is consistent with these standards. OPRA claimed that the fair allocation of costs among all persons that derive a commercial benefit from options market information will help level the playing field for all users of market data by eliminating an unintended subsidy for redistributors of less useful delayed data at the expense of more useful current information. OPRA noted that the proposal would not establish fees for end users of market data. Instead, the redistribution fee would apply to vendors. OPRA acknowledged, however, that vendors of securities market information most often pass their costs on to the customers. Nevertheless, in OPRA's views, the

proposal would more fairly allocate distribution fees and would reduce fees payable by some vendors. OPRA stated that the proposal would reduce fees payable by vendors that receive direct access to OPRA data from \$2800 (current direct access charge) to \$2700 per month (the \$900 direct access charge plus the \$1800 redistribution fee). Further, fees payable by vendors whose access includes indirect access to real-time and delayed data will be reduced from \$2800 (the current pass-through fee) to \$1800 per month (redistribution fee). Only vendors whose access is limited to indirect access to delayed data would be subject to higher fees (an increase from zero to \$1800 per month).

OPRA argued that most, if not all end-users will benefit from the proposed fee changes, assuming vendors of real-time data pass on their savings to real-time and delayed data subscribers. OPRA claimed that even customers of an indirect access vendor whose business is exclusively delayed data distribution should not see any significant increase in vendor charges. For example, OPRA stated that if such a vendor has 1,000 subscribers, the vendor would have to increase the subscriber charge by only \$1.80 per month in order to receive the entire redistribution fee. In addition, OPRA claimed that the proposal would not impose any fee on redistributors or end-users of "historical" information, facilitating the affordability and availability of market data for long-term monitoring and analysis. OPRA also noted that it provides several methods by which an individual investor may access real-time data at a low cost.<sup>11</sup>

### III. Discussion

Section 11A of the Exchange Act sets forth the standards under which the Commission must consider whether to approve fees proposed by exclusive securities information processors ("SIPs"), such as the pending OPRA proposal. Among other things, the proposal must assure that exchange members, brokers, dealers, SIPs, and investors would be able to obtain information with respect to quotations for and transactions in securities published or distributed by any self-regulatory organization or SIP on terms

that are not unfair, unreasonable, or unreasonably discriminatory.<sup>12</sup>

The Commission believes that the proposed fee changes satisfy the standards set forth by Congress with regard to the permissible terms for access to market information and, therefore, believes that the proposed fees are consistent with the Exchange Act. In this case, the proposal represents a reduction in fees for several vendors; the delayed data fees do not appear unfairly to restrict access to market information; and the reduction in fees for access to current information will further other statutory goals. In addition, historical price information, such as is used for academic and analytical purposes, will continue to be available exclusive of OPRA fees.<sup>13</sup>

In 1978, the Commission stated that three sections of the Exchange Act directly relate to the terms upon which securities information is obtained: (1) The standards set forth in Section 11A(b)(3) governing the registration of SIPs; (2) the standards set forth in Section 11A(b)(5) for review of prohibitions or limitations on access to services of registered SIPs; and (3) the standards set forth in the Commission's rule-making authority under Section 11A(c).<sup>14</sup> The Commission found that these sections permit a registered SIP to impose terms of access on vendors, including access fees.<sup>15</sup> The Commission also noted that the ability to impose such terms is subject to Commission review as to fairness and reasonableness, and may be limited by the Commission's adoption of a rule specifically prohibiting the terms or fees as being unfair, unreasonable or unreasonably discriminatory.<sup>16</sup>

The Commission also has addressed the issue of whether, pursuant to a joint industry plan, charges for the retransmission, on a current and continuing basis, of consolidated market data are permissible.<sup>17</sup> The Commission

<sup>12</sup> 15 U.S.C. 78k-1; S. Rep. No 75, 94th Cong, 1st Sess. 9-12 (1975) ("Senate Report").

<sup>13</sup> The Commission understands the concerns of commenters, including the potential consequences of fee increases. As a related matter, the Commission believes that user comment on proposed OPRA fees could be even more effective if sought prior to filing such fees with the Commission. The Commission encourages OPRA to solicit comment on fee proposals before filing those proposals for Commission review.

<sup>14</sup> See Securities Exchange Act Release No. 15372 (November 29, 1978) ("OPRA Order").

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* To date, the Commission has not exercised its rulemaking authority under Section 11A(c) of the Exchange Act with respect to the fees charged by registered SIPs.

<sup>17</sup> See Securities Exchange Act Release No. 17161 (September 24, 1980) (Order approving proposed amendment to the Consolidated Tape Plan).

<sup>9</sup> See Letter from Carl Hendrix, to Jonathan G. Katz, Secretary, SEC (June 27, 1995).

<sup>10</sup> See Letter from Michael L. Meyer, Schiff Hardin & Waite, Attorney for OPRA, to David Oestreicher, Attorney Division of Market Regulation, SEC (August 1, 1995).

<sup>11</sup> For example, OPRA excludes non-professional subscribers from its real-time data subscriber fees. Instead, OPRA charges that vendor at \$2.00 per month fee for each non-professional subscriber that receives real-time data from the vendor. Further, OPRA imposes no fees on end users of telephone dial-up services. Vendors of such services, however, are charged a port-based fee.

found a proposed Consolidated Tape Association retransmission fee consistent with the Exchange Act.<sup>18</sup>

In addition, the appropriate scope of fees was addressed in a denial of access petition filed by Instinet against the National Association of Securities Dealers, Inc. ("NASD").<sup>19</sup> The NASD attempted to impose certain vendor and subscriber fees on the quotation information (referred to as the National Quotation Data Service) sought by Instinet. In its review of the denial of access petition, the Commission noted that in a situation where a monopolistic supplier of market information is in direct competition with vendors in providing such information, there is the potential for the supplier to erect barriers to entry by charging higher fees to vendors of competing information services.<sup>20</sup> The Commission determined, therefore, that because Instinet sought to distribute certain quotation information in competition with the NASD, an exclusive processor of that information, the NASD's proposed fees were required to be cost-based to ensure neutrality and reasonableness of the vendor and subscriber fees.<sup>21</sup>

OPRA's proposal will encourage the use of real-time data by reducing the OPRA fees charged to vendors of real-time data. The Commission believes that investment decisions should be based on the most accurate, up-to-date information available. Thus, this proposal marks a step toward making real-time data more accessible to a greater number of market information users. Recent technological innovations have further enhanced the feasibility of providing easy access to real-time market data to a larger segment of the investor community. The Commission encourages OPRA to utilize these new

technologies to encourage additional steps to promote the use of real-time information on a fair, reasonable and non-discriminatory basis.

The Commission recognizes that not all subscribers can afford regular real-time service and, as noted by some commenters, not all subscribers believe their use of market data justifies the cost of such service (even assuming that real-time vendors pass on their savings to their subscribers). As to these subscribers, there is a continued need for access to affordable delayed data. One adverse consequence of the fee restructuring will be to increase the costs to vendors of delayed data which, in turn, may result in a modest increase in the cost of delayed data to subscribers. The Commission has long been committed to protecting the public's right of access to market information and believes that any modest increase in costs to subscribers of delayed data under OPRA's proposed fee restructuring will not act as a barrier to fair and reasonable access to information for those subscribers. Competition among technology and information providers continues to thrive. Over the past few years, individual inventors have enjoyed unprecedented access to market data through varied media, including CNN, CNBC, satellite services, on-line computer services, the World Wide Web, and the Internet. The Commission believes that those innovations will continue to facilitate the fair and reasonable distribution of delayed data even though redistributors of delayed options data will be required to pay a redistribution fee.

*It is therefore ordered*, pursuant to Section 11A(a)(3)(B) of the Act,<sup>22</sup> that the amendment (S7-8-90) to the OPRA Plan be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>23</sup>

Jonathan G. Katz,

Secretary.

[FR Doc. 95-29775 Filed 12-6-95; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-36539; International Series Release No. 895; File No. SR-Phlx-95-47]

# Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Japanese Yen Quote Spread Parameters

November 30, 1995.

## I. Introduction

On August 22, 1995, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposal to widen the quote spread parameters applicable to Japanese yen options. The proposed rule change was published for comment in the Federal Register on September 21, 1995.<sup>3</sup> No comments were received on the proposed rule change. This order approves the proposal.

## II. Description of the Proposal

The Phlx seeks to widen the quotation spread parameters (bid/ask differentials) applicable to Japanese yen options in light of the increased volatility and value of the underlying currency, the Japanese yen.<sup>4</sup> The Exchange proposes to change the parameters in Rule 1014(c)(ii) and Floor Procedure Advice ("Advice") F-6, Option Quote Parameters, from \$.000004, \$.000006, and \$.000008 to \$.000006, \$.000009, and \$.000012. Under the proposal, the new quote spread parameters will be reflected in Rule 1014 as follows: no more than \$.000006 between the bid and the offer for each option contract for which the bid is \$.000040 or less; no more than \$.000009 where the bid is more than \$.000040 but does not exceed \$.000160; and no more than \$.000012 where the bid is more than \$.000160.

In its proposal, the Phlx notes that as the yen spot value has risen, the spreads between the bid and the offer in the spot price also have risen. For example, a spot market of 101.50 (bid)–.60 (ask) yen in January 1995 represented \$.009852–.009842 in American terms, which is ten "ticks" wide. Comparatively, a spot market of 85.10–.20 yen in May 1995 represented \$.011751–.011737, which is 14 ticks wide. Similarly, the Exchange states that the spreads in Japanese yen

<sup>18</sup> *Id.* See also 17 CFR 240.11Aa3-1(d) (relating to retransmission of transaction reports or last sale data); 17 CFR 240.11Aa3-1(e) (permitting the imposition of reasonable, uniform charges for the distribution of transaction reports or last sale data).

<sup>19</sup> Securities Exchange Act release No. 20874 (April 17, 1984) ("Instinet case").

<sup>20</sup> *Id.* at 40–41.

<sup>21</sup> *Id.* Although the fee restructuring proposal is not cost-based in the sense described in the Instinet case, the purpose of the restructured fee schedule is fundamentally different. OPRA's proposal is designed to reallocate costs fairly and equitably among all persons that derive a commercial benefit from the information obtained from exchange markets. Because OPRA is not in direct competition with the vendors that will be subject to the redistribution fee, the analysis applied in the Instinet case is not strictly applicable. Although OPRA's posture with respect to the vendors that will be affected by the redistribution fee is different than the relationship between the NASD and Instinet, the Commission continues to have the duty to ensure that OPRA's fees satisfy applicable standards.

<sup>22</sup> 15 U.S.C. 78k-1(a)(3)(B).

<sup>23</sup> 17 CFR 240.30-3(a)(29).

<sup>1</sup> 15 U.S.C. 78s(b)(1) (1988).

<sup>2</sup> 17 CFR 240.19b-4 (1994).

<sup>3</sup> See Securities Exchange Act Release No. 36239 (September 15, 1995), 60 FR 49032.

<sup>4</sup> Option quote parameters govern the width of market quotations, establishing the maximum widths between the bid and the offer for an option contract.